

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 18TH DAY OF JUNE 1998

BEFORE

THE HON'BLE MR. JUSTICE V. GOPALA GOWDA

WRIT PETITION No.5653/94

BETWEEN:

Sadashiv Anant Barde,
Occ: Agriculture,
R/o.Nipani,
Tal: Chikodi,
Dist: Belgaum.

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..PETITIONER

(By Smt. Vijaya R.Hanumanthgad, Advocate)

AND:

1. The State of Karnataka,
by its Secretary to
Revenue Department,
Vidhana Soudha,
Bangalore.
2. The Land Tribunal,
Chikodi, by its
Chairman.
3. Somasekhar Rudrappa Kothiwale,
Occ: Tobacco Merchant,
R/o.Nipani.
4. Bharat Kumar Ambajirao Desai,
Nipankar, R/o.Nipankar Wada,
Post: Nipani, Tal: Chikodi,
Dist: Belgaum.
5. Laxmanrao Ambajirao Desai
Nipankar, Post: Nipani,
Taluk: Chikodi, Dist: Belgaum.

..RESPONDENTS

(By Sri Mohan Shanthanagoudar for R-3,
Smt.Bharathi Nagesh, AGA for R-1&2,
Sri.B.S.Kamate for R-4)

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This Writ petition is filed under Articles 226 & 227 of the Constitution of India praying to call for the records of the proceedings in R.A.No.271/1987 pending before the Land Reforms Appellate Authority, Chikodi, etc.,

This Writ petition is coming on for hearing this day, the Court made the following:-

O R D E R

On a short ground this writ petition has to be allowed.

2. The petitioner who is a rival claimant is aggrieved by the impugned order passed by the Land Tribunal rejecting ~~his~~ ^{the} claim application for grant of occupancy rights in respect of the land bearing Sy.No.135/2A measuring 1 acre and 28 guntas and Sy.No.136 measuring 6 acres 5 guntas of Nippand Town, Belgaum District, and granted occupancy rights in respect of the very same lands in favour of the third respondent has filed the writ petition. The petitioner had filed writ petition before this Court in W.P.No.2361/82 urged various legal grounds in assailing the impugned order passed by the Land Tribunal. During pendency of that writ petition, Land Reforms Act was amended, constituting Land Reforms Appellate Authorities conferring right of appeal to the parties in respect of the orders passed

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by the Land Tribunal, ~~Chikodi~~^{Chikodi}. In pursuant to the said amendment, the said matter was got transferred to the erstwhile Additional Land Reforms Authority, Chikodi. During pendency of the appeal, the application under Rule 9 of the Karnataka Land Reforms Appellate Authority Rules was filed by the petitioner. The said application was filed seeking permission of the authority to adduce additional evidence and to produce additional documents in support of the claim of the petitioner. The said application came to be allowed by the said authority, in the meanwhile, Land Reforms Appellate Authority was abolished by virtue of an amendment to the Act again. This Court has already taken the view that if the parties have filed applications before the erstwhile Land Reforms Appellate Authority and the same was allowed to produce additional documents in support of the claim and counter claim of the parties, then it would be proper for this Court to exercise power under Articles 226 and 227 of the Constitution of India and remit back the matter to the Land Tribunal for fresh consideration by giving fair and reasonable opportunity to the parties to establish their respective cases before it. In view of the

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law declared by this Court and in view of the fact that the Tribunal has not conducted proper and legal enquiry as contemplated under Section 48A of the Act and under Rule 17 of the Karnataka Land Revenue Rules read with Section 34 of the Karnataka Land Revenue Act, 1964. It is a proper and fit case to remit the matter to the Tribunal for fresh consideration. Hence, I pass the following order:

Writ petition is allowed. Rule made absolute. Impugned order at Annexure-B dated 2.1.1983 in case No.KLR:SR:163:74+173/74 is hereby quashed with a direction to the Land Tribunal the second respondent herein to conduct an enquiry after giving an adequate opportunity to the petitioner and the respondents 3 to 5 and dispose of the same in accordance with law within six months from the date of receipt of this order.



Sd/-
JUDGE

Bg/-
Bg/-230698